

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Judge Eugene R. Bishop,
No. 161

**DECISION AND ORDER IMPOSING
PRIVATE ADMONISHMENT**

This is a disciplinary matter concerning Judge Eugene R. Bishop of the Riverside County Superior Court. Formal proceedings having been instituted, this matter is before the Commission on Judicial Performance pursuant to rule 127 of the Rules of the Commission on Judicial Performance (discipline by consent).

For the reasons set forth in this decision, the commission privately admonishes Judge Bishop for violating the rights of minors, parents and guardians in four separate cases as set forth in the Notice of Formal Proceedings and stipulated to by Judge Bishop. The commission also has determined that this private admonishment shall be available to the public.¹

APPEARANCES

Judge Bishop is represented by James E. Friedhofer. Trial Counsel for the Commission on Judicial Performance is Jack Coyle.

PROCEDURAL HISTORY

A Notice of Formal Proceedings was filed on September 5, 2001, charging Judge Bishop with four counts of misconduct. Judge Bishop filed his verified answer on September 18, 2001. Pursuant to rule 121, the commission requested the appointment of three special masters, and the Supreme Court appointed Justice Paul Turner, presiding, Justice Rebecca A. Wiseman, and Judge Nancy Wieben Stock as masters. The masters held a pretrial telephone conference on November 9, 2001, and the case was scheduled for an evidentiary hearing commencing January 16, 2002.

On January 10, 2002, Judge Bishop and Trial Counsel submitted a Stipulation for Discipline by Consent pursuant to rule 127 of the Rules of the Commission on Judicial Performance. On January 11, 2002, the commission issued an order vacating the hearing date in order that the commission might consider the Stipulation at its January 2002 meeting.

¹ With the issuance of this decision accepting the Stipulation for Discipline by Consent, the Stipulation is filed and is available to the public.

THE STIPULATION FOR DISCIPLINE BY CONSENT

A. Judge Bishop's Agreement to Discipline

Judge Bishop and Trial Counsel request that the commission resolve this matter by the imposition of a private admonishment. Judge Bishop, however, understands and accepts that the commission "may disclose publicly its decision and order of private admonishment, this stipulation, and respondent's affidavit of consent. (Cal. Const., art. VI, § 18(j).)" Judge Bishop further recognizes that in its decision and order the commission "may articulate the reasons for its decision," and he agrees "to accept any such explanatory language that the commission deems appropriate."

The Stipulation further notes that Judge Bishop is no longer acting in a judicial capacity. On December 22, 2001, Judge Bishop gave notice, without right of revocation, that he was electing to retire from judicial office, effective March 29, 2002. The Stipulation further notes that "because of vacation time, his last day on the bench was December 21, 2001."

Judge Bishop has agreed that he "will not seek or accept an assignment, appointment or reference of work from a California state court." In addition, he understands "that if he does seek or accept an assignment, appointment, or reference of work, the commission may rescind the private admonishment and reopen formal proceedings."

Judge Bishop has signed and submitted an affidavit consenting to the sanction of a private admonishment, stating that the consent is freely and voluntarily given, admitting the truth of the charges as alleged, and waiving review by the Supreme Court.

B. Stipulated Facts

The Stipulation for Discipline sets forth the following factual stipulation, which tracks the allegations set forth in the Notice of Formal Proceedings.

COUNT ONE

In *In re Daniel K., et al.*, No. IJ-8816, as set forth below, respondent violated the due process rights of Anna K. by removing her children, Daniel and Shane (spelled "Shayne" in the Notice of Formal Proceedings) K., from her home without notice or a reasonable opportunity to be heard.

On April 1, 1997, respondent presided at the six-month review hearing for Anna K.'s daughter, Korah K., in case number IJ-8816, pursuant to Welfare and Institutions Code section 366.21(e). At the time of the hearing, Anna K. had two sons, Daniel and Shane, who resided with her.

At the hearing, the attorney for Korah, who also represented Daniel and Shane, requested that the two boys "be pulled from the home." Respondent ordered that Daniel and Shane be removed from Anna K.'s home and be placed in foster care. Respondent did so without notice to Anna K. that such a request would

be considered at the hearing. Welfare and Institutions Code sections 332(e), 335(a), 337(c) and 387 require that such notice be given. Because no supplemental petition had been filed prior to respondent's order, and no noticed hearing on such a petition took place, respondent's order violated Welfare and Institutions Code section 387.

On March 4, 1998, the Court of Appeal for the Fourth Appellate District (hereafter "Court of Appeal" or "court") found that "the juvenile court violated the mother's right to basic due process under the federal and state constitutions and violated several statutes by removing the boys from their mother's physical custody at the six-month hearing without a supplemental petition[] being filed or prior notice."

Respondent's conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT TWO

In *In re Anthony B.*, No. IJ-9898, as set forth below, respondent violated the due process rights of William B., the father of Anthony B., by proceeding with hearings on July 28, 1997, September 25, 1997, and February 3, 1998, without adequate notice or a reasonable opportunity to be heard.

On July 25, 1997, the Riverside County Department of Public Social Services (hereafter "DPSS") filed a petition in *In re Anthony B.*, No. IJ-9898, alleging Anthony to be a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g). The petition alleged that the father of Anthony B. was William B., and listed William B.'s address as Tehachapi State Prison. William B. was a state prisoner in California from on or about May 29, 1997, to on or about September 16, 1998.

On July 28, 1997, respondent presided over a detention hearing in the case. Respondent appointed counsel for Anthony and for Anthony's mother, but not for William B. At the hearing, respondent ordered the detention of Anthony. William B. was not present at the hearing and no attorney appeared on his behalf. No notice of the petition or of the hearing was provided to William B. Welfare and Institutions Code sections 302(b), 311(a), 335(a) and 337(a), and California Rules of Court, rule 1407(e)(3), require that such notice be given. In addition, respondent failed to determine whether notice was "given as required by law," or to "make an appropriate finding [regarding notice] noted in the minutes," as required by rule 1412(k) of the California Rules of Court.

On September 25, 1997, respondent presided over a combined jurisdictional and disposition hearing in the case. William B. was not present at the hearing and did not waive his right to be present, and no attorney appeared on his behalf. At the hearing, respondent found that Anthony was a dependent child of the court and ordered that he be placed in foster care. This action violated Penal Code section

2625(d), which provides that “no petition to adjudge the child of a prisoner a dependent child of the court” pursuant to Welfare and Institutions Code section 300(b) may be adjudicated without the physical presence of the prisoner or the prisoner’s attorney, or a waiver by the prisoner. Although the minute order of the September 25, 1997, hearing indicates that the “COURT FINDS notice has been given/attempted by law[,]” notice was not given to William B. at least five days in advance of the hearing, as required by Welfare and Institutions Code section 337(a).

On February 3, 1998, respondent presided over a six-month review hearing, pursuant to Welfare and Institutions Code section 366.21(e). William B. was not present at the hearing and no attorney appeared on his behalf. Notice of the hearing was not provided to William B. Welfare and Institutions Code section 302(b) requires that unless their parental rights have been terminated, both parents shall be informed of all proceedings involving the child. Respondent failed to determine whether notice was “given as required by law,” or to “make an appropriate finding noted in the minutes,” as required by rule 1412(k) of the California Rules of Court. Respondent found that William B. had not complied with the requirements for reunification services, and terminated reunification services.

On June 4, 1998, respondent presided over a selection and implementation hearing in the case. At that hearing, respondent terminated the parental rights of William B. Counsel for William B., whom respondent appointed on April 21, 1998, appeared at the hearing. However, respondent’s order terminating parental rights was based on respondent’s findings at the six-month review hearing that respondent conducted on February 3, 1998, without notice to William B., or an appearance by William B. or counsel on his behalf.

On March 10, 1999, the Court of Appeal reversed respondent’s order terminating parental rights and remanded the case for a new jurisdictional hearing. (*In re Anthony B.*, No. E023029.) The court found that “egregious due process violations” rendered the proceedings in the juvenile court “fundamentally unfair.” The Court of Appeal found that due process violations in the case included the failure to provide adequate notice to William B. of the filing of the petition, the detention hearing, the jurisdictional hearing, and the six-month review hearing. The court also found that by the time respondent appointed counsel for William B., prior to the selection and implementation hearing:

... it was too late because the juvenile court relied on the findings of the earlier [six-month review] hearing as the basis for its order terminating parental rights. Such reliance is proper only when the parent has had notice and the opportunity to appear at the earlier hearing. [Citation.]

Respondent’s conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT THREE

In *In re Shawn P.*, No. IJ-10363, as set forth below, respondent violated the due process rights of Penelope P. and abused his authority by ordering that the legal custody of Penelope's child, Shawn P., be transferred to Shawn's father, without giving Penelope P. notice or a reasonable opportunity to be heard, and without making a finding of dependency.

On January 16, 1998, Penelope P. received legal and physical custody of Shawn in family law court. On February 3, 1998, the DPSS filed a petition in *In re Shawn P.*, No. IJ-10363, alleging Shawn to be a dependent child of the court pursuant to Welfare and Institutions Code section 300.

On February 4, 1998, respondent presided at a detention hearing in the case. At the hearing, respondent appointed separate counsel for Shawn, Shawn's mother, and Shawn's father. Shawn's attorney requested that custody of Shawn be given to Shawn's father. Penelope P.'s attorney objected to the request and stated, correctly, that his client was unaware that such action was going to take place that day. Respondent ordered that Shawn would go to the custody of the father, and dismissed the case without making a finding of dependency.

Because respondent issued his order without notice to Penelope P. that there would be a hearing at which it could be decided that custody of Shawn could be transferred to the father, respondent's order violated due process. Because respondent lacked jurisdiction to make a custody order without first finding Shawn to be a dependent child of the court, respondent's custody order exceeded respondent's jurisdiction and constituted an abuse of authority.

On March 5, 1999, the Court of Appeal reversed respondent's order. The court found that "the juvenile court ... violated the mother's basic rights and exceeded its jurisdiction in giving custody to the out-of-custody parent...." (*In re Shawn P.*, No. E022375.)

Respondent's conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT FOUR

In *In re Emily D.*, No. IJ-11166, as set forth below, respondent violated the due process rights of the parents and maternal grandparents of Emily D. when respondent ordered, without notice or a reasonable opportunity to be heard, that Emily, who was residing with her grandparents, be placed in a non-relative foster/adoptive home and that there be no visitation by the parents or grandparents.

On August 17, 1999, respondent presided at the six-month review hearing in *In re Emily D.*, No. IJ-11166, pursuant to Welfare and Institutions Code section 366.21(e). At the time of the hearing, Emily was approximately eight months old

and had resided with her maternal grandparents, Cindy and John H., for all but one day since she was approximately three days old. The grandparents were not present at the hearing. Emily's two older siblings, Jordan and Megan, resided with their parents, Molly and Michael D., and were also in dependency proceedings.

At the hearing, the DPSS recommended that the dependency of Jordan and Megan be terminated, with custody of both children given to the parents. The DPSS also recommended that family reunification services be terminated with regard to Emily, based on the parents' waiving their right to further reunification services with her. The parents wanted Emily to be adopted by the maternal grandparents, Cindy and John H.

Emily's attorney expressed concern as to Emily's placement. She stated: "I think as the child that's not wanted, it's going to be very difficult for her to be adopted by the grandparents and live close to her siblings knowing that she's ... an unwanted child."

The attorney for the DPSS pointed out that "it is the law to request placement of the children with relatives first if possible." Respondent replied:

Well, I understand that, but this is weird here. There's got to be something wrong with their heads as I see it. They want to keep two but don't want the third one? They want to give the third one to Grandma and Grandpa. All sounds kind of ridiculous to me.

Respondent also stated: "Why don't we just take all of them, keep them all together, and find an adoptive home for all three of them and they can live together."

When the DPSS attorney stated that the DPSS was recommending that custody of the two older children be returned to the parents, respondent stated: "But they are going to have to decide whether they want all three or none. Not going to do this."

Following a recess, Emily's attorney requested that Emily be placed immediately in a non-relative foster/adoptive home. The attorney for Emily's mother, Molly D., stated that the mother "will reluctantly agree to that since it's the best alternative that seems to be available at this time." The father's attorney also expressed the father's agreement with the request. Respondent ordered that Emily be placed in a non-relative foster/adoptive home, and that there be no visitation by the parents or grandparents.

The hearing took place without notice to Emily's parents or to her custodial grandparents that an order removing Emily from the physical custody of the grandparents and placing her in a foster home would be considered at the hearing. Welfare and Institutions Code section 387 provides that "[a]n order changing or

modifying a previous order by removing a child from the physical custody of a ... relative ... and directing placement in a foster home ... shall be made only after noticed hearing upon a supplemental petition.” Notice of the hearing must be given to the parents and the present custodian of the minor pursuant to Welfare and Institutions Code sections 332(e), 335(a), 337(c) and 387(b), and California Rules of Court, rule 1431(c). Because no supplemental petition was filed and no noticed hearing on such a petition took place, respondent’s order violated Welfare and Institutions Code section 387.

The failure to provide notice circumvented the rights of Emily’s parents, and of Emily’s grandparents as custodians, to request that the clerk of the juvenile court issue subpoenas requiring the testimony of witnesses and the production of papers at the hearing, pursuant to Welfare and Institutions Code section 341 and California Rules of Court, rule 1408(d).

The failure to provide notice to the grandparents that respondent would consider issuing an order to remove Emily from their home also precluded them from applying to respondent for recognition as Emily’s “de facto” parents, pursuant to rule 1412(e) of the California Rules of Court. A de facto parent has the right to be present, to be represented by counsel, and to present evidence at hearings at which the status of the dependent child is at issue.

Following respondent’s order, Molly D. filed a petition for writ of mandate in the Court of Appeal in *Molly D. v. Superior Court*, No. E025658. On September 30, 1999, the court invited the DPSS to file an informal response, stating:

Based on our preliminary review of the petition and record, this court is concerned that the trial court abused its discretion in ordering that the minor be immediately removed from the care of her maternal grandparents and placed in a non-relative foster-adopt home. The Department of Public Social Services has not sought such an order, and the parents could not have anticipated such an action being taken by the court. Their reluctant agreement to the placement was prompted only by the trial court’s threat to remove all three children, and we conclude that they did not waive objections to the court’s order. At a minimum, the due process rights of the parents were violated because of the failure to afford them adequate notice and a hearing on the matter. Moreover, this procedure deprived the grandparents, who may well be entitled to de facto parent status, of an opportunity to appear and be heard in this matter.

Respondent’s conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

DISCIPLINE

The commission adopts the factual stipulations set forth in the Stipulation for Discipline by Consent and finds that Judge Bishop has admitted all of the factual allegations set forth in the Notice of Formal Proceedings.

The commission finds that Judge Bishop's misdeeds constitute sanctionable actions under article VI, section 18(d) of the California Constitution. The commission concludes that Judge Bishop's actions on each count violated canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2A ("A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"), 3B(2) ("A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law"), 3B(7) ("A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law"), and 3B(8) ("A judge shall dispose of all judicial matters fairly, promptly, and efficiently").

The commission accepts the request by Judge Bishop and Trial Counsel to resolve this matter by imposition of a private admonishment. A number of factors support this resolution, including: (1) Judge Bishop is 72 years old, has served as a judge for over 20 years, and is no longer acting in a judicial capacity; (2) Judge Bishop has agreed not to seek or accept an assignment, appointment or reference of work from a California state court and has further agreed that were he to seek or accept an assignment, appointment or reference of work, the commission could rescind this private admonishment and reopen formal proceedings; and (3) this resolution avoids the costs of an evidentiary hearing. The issuance of a private admonishment also is supported by the commission's determination that the private admonishment shall be "open to the public." (See Cal. Const., art. VI, § 18, subd. (j).)

This decision shall constitute the private admonishment of Judge Eugene R. Bishop.

Commission members Mr. Michael A. Kahn, Judge Rise Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mrs. Crystal Lui, Justice Vance W. Raye, Ms. Ramona Ripston, Ms. Barbara Schraeger, and Dr. Betty L. Wyman voted to impose this private admonishment and to release the private admonishment to the public. Commission member Mr. Marshall B. Grossman concurs with the decision, but would characterize the admonishment as public as he believes that is what it is in substance. Commission member Ms. Gayle Gutierrez did not participate in this proceeding.

Dated: February __, 2002

Michael A. Kahn, Esq.
Chairperson